

I realize that Elena Kagan will be confirmed very soon as our next Supreme Court justice, but I am very disappointed by her nomination. I certainly have nothing against her personally, but the Supreme Court is our highest appellate court. Courts of appeal basically second-guess trials. I wish our President and all future Presidents would appoint people who have actually tried cases. We should try to nominate justices who have had experience both as trial lawyers and as trial judges, people who understand the heat of the battle, the give and take, the decisions that have to be made on the spur of the moment both by lawyers and judges. Ms. Kagan may be a brilliant woman, but she has none of this experience.

I want to read a portion of an article in the June 28 issue of *Human Events* by a man who spent over 20 years as a judge before coming to Congress, our colleague, the gentleman from Texas (Mr. POE). Congressman POE wrote, "Supreme Court nominee Elena Kagan has never been a judge. She's never seen a courtroom from the bench. She's never had a judge's responsibilities.

"Elena Kagan has never instructed a jury or ruled on a point of law—any point of law. She's never tried a criminal case or even a traffic case. She has not decided even one constitutional issue. We don't know whether she believes the Constitution is the foundation of American law or whether she thinks, like many, that the Constitution constantly changes based on personal opinions of Supreme Court justices. But either way, Elena Kagan has never had to make a constitutional call in a court of law in the heat of a trial. She has never admitted evidence or ruled out evidence or ruled on the chain of custody regarding evidence. She has never made even one decision regarding any rule of evidence. She has never ruled on the exclusionary rule, the Miranda doctrine, an unlawful search and seizure allegation, a due process claim, an equal protection violation, or any other constitutional issue.

"She has never impaneled a jury. She has never instructed on reasonable doubt or sentenced a person to the penitentiary. She has never had to decide whether a witness was telling the truth or not. As a judge, she has never heard a plaintiff, a defendant, a victim, or a child testify as a witness. She has never made that all-important decision of deciding whether or not a person is guilty or not guilty of a crime. She has never ruled on a life or death issue.

"Elena Kagan has never made a judgment call from the bench, not a single one. Yet, as a Supreme Court justice she would be second-guessing trial judges and trial lawyers who have been through the mud, blood, and tears of actual trials and actual courts of law. How can she possibly be qualified to fill the post of a Supreme Court justice?"

Mr. POE continued, "Kagan is an elitist academic who has spent most of

her time out of touch with the real world and with the way things really are. Being a judge would be an exercise to the new Supreme Court nominee. She has read about being a judge in books, I suppose. She might even have played pretend in her college classroom, but she has never held a gavel in a courtroom. Her first time to render judgment should not be as a member of the United States Supreme Court.

"Aside from being a judge, she has never even been a trial lawyer. She has never questioned a witness, argued a case to a jury, or tried any case to any jury anywhere in the United States. Real world experience makes a difference." This was written by our colleague, Mr. POE. And I agree with everything he wrote.

Finally, I want to commend a Member from the other body, the gentleman from Tennessee, Senator ALEXANDER, my own Senator, for his decision to vote against the nomination of Mrs. Kagan. It is a very poor nomination.

NOTHING IS TOO GOOD FOR WALL STREET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

Mr. DEFAZIO. Well, big surprise—last Friday, the Obama administration went after the greed and excess on Wall Street during the financial meltdown. They went after it in the form of their esteemed pay czar, Kenneth Feinberg. He got out a feather duster and he waived it vaguely in the direction of Wall Street saying, shame, shame on you. He identified 17 mega-firms on Wall Street who paid out \$1.7 billion in bonuses and other emoluments to their executives while they were lining up at the same time with their hands out to take tens of billions of dollars of TARP bailout money to save their firms from the risky bets they had made that were endangering their future that had gone bad.

Now, he described some of these bonuses and payouts as "ill-advised," "poor judgment," "lacking clear justification," but Mr. Feinberg, the all-powerful pay czar who talked so tough at the beginning, won't try and recoup the money. He says, "It's not contrary to the public interest." Shaming, shaming will be penalty enough. But he won't name anybody who got the money. Can you imagine the guys at their really exclusive club or their private resort somewhere smoking their \$500 cigars, drinking their expensive cognac, feeling really shamed when he won't even name the people who should be shamed? They don't even know they should be shamed. They got \$10 million, they thought it was justified; they don't think he's talking about them.

Now he said, At what point are you piling onto poor old Wall Street, going beyond what is warranted? Not in the public interest, piling on. Just think

about it. Some of these executives who drove their firms to the edge of collapse and bankruptcy and tanked the U.S. economy and put 8 million people out of work got \$10 million. Now that \$10 million little bonus, that's about 250 years pay for an Army captain in Afghanistan, 250 years for an Army captain, one day in the life of a failed Wall Street executive, and Mr. Feinberg says, "They should be ashamed."

He went on to say, well, if he had gone after them, it could have exposed them and their firms to lawsuits from shareholders. Now, wait a minute, public interest, isn't that the public part of the corporation, the shareholders? But Mr. Feinberg apparently doesn't care much about the shareholders. This is about the executives, because those poor executives in those firms, why, their shareholders might try and recapture some of the misbegotten gains that these people got.

Now, this all could happen because the original Bush-Paulson bailout didn't put any restrictions on executive pay and bonuses. Hundreds of billions of dollars to bail out Wall Street taken from the taxpayers, no restrictions on executive pay and bonuses; \$1.7 billion paid out, ill-advised, poor judgment, lacking clear justification, they should be ashamed. But the pay czar isn't going to try and get it back.

There is one thing very consistent about this administration: Nothing is too good for Wall Street.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

(Mr. POE of Texas addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

MARCELLUS SHALE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. THOMPSON) is recognized for 5 minutes.

Mr. THOMPSON of Pennsylvania. Madam Speaker, I am here today to speak about an incredible opportunity which is in the northeastern part of the United States, and that is the Marcellus shale natural gas. The Marcellus shale describes a natural gas play in Pennsylvania that has created jobs and economic growth, even in the most difficult of economic times. It is one of the largest deposits of natural gas in the world, and much of it is located in my district. However, the play is deep down and requires a process called fracking, in which water, sand, and approved chemicals are pressured into the play to fracture the shale to release the gas. Now it is this process that has come under criticism and has been the subject of a great deal of inaccurate information both in the media and a so-called documentary called "Gasland."